

## **BOARD OF ZONING APPEALS**

### **Minutes**

**April 23, 2002**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on April 23, 2002, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, JAMES RUANE, JOHN ROGERS, and RANDY PHILLIPS. The following Board members were absent: FLOYD PITTS.

SHARON DICKGRAFE, Law Department present

J. R. COX, Commercial Plan Review/Commercial Zoning -- Office of Central Inspection, absent.

The following Planning Department staff members were present:

SCOTT KNEBEL Assistant Secretary,

ROSE SIMMERING, Recording Secretary.

Item #1 on the Agenda, is approval of the BZA meeting minutes for March 26, 2002.

**FOSTER moved ROGERS seconded to approve the “Minutes” of  
March 26, 2002.**

**MOTION carried 5-0.**

**RUANE:** Proceeding on to Item #2.

**PHILLIPS:** Has a conflict of interest and is excused from the Board. We still have a quorum.

**KNEBEL, Planning staff:** Presents staff report and slides. Staff recommends approval, subject to conditions, in staff report.

### **SECRETARY’S REPORT**

**CASE NUMBER:** BZA2002-00011

**OWNER/APPLICANT:** Unified School District 259 c/o Joe Hoover

**AGENT:** n/a

**REQUEST:** Variances to reduce the parking space requirement from 56 spaces to 24 spaces and to reduce the street side setbacks from 15 feet to 5 feet on the west and from 15 feet to 10 feet on the south for Metro Boulevard School

**CURRENT ZONING:** “TF-3” Two-Family Residential

**LOCATION:** Generally located north of Morris and west of Madison (751 George Washington Boulevard)

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** Metro Boulevard School was constructed on the subject property north of Morris and west of Madison as Frances Willard School in 1927. At the time the school was constructed, George Washington Boulevard, which runs southeast-northwest and is located northeast of the school building, was a through street. In the late 1970s when I-135 was constructed west of the subject property, George Washington Boulevard was terminated with a cul-de-sac at the north end of the school property. At the time I-135 was constructed, the State condemned almost one-half of school property for right-of-way. The school's parking area, which was located on the condemned land and provided approximately 62 parking spaces, was relocated to its current location north of the school across George Washington Boulevard and was reduced to 24 parking spaces due to land area limitations. The State's condemnation of school property also resulted in existing buildings located in the southwest corner of the current school property violating the building setback requirements and becoming non-conforming structures.

As indicated in the attached justification, a multi-purpose room, kitchen, and restrooms will be added to the north end of the school building (see attached site plan). Since the value of the addition exceeds 50 percent of the value of the existing structure, the entire property must come into compliance with existing zoning regulations, including parking requirements. The parking requirement for the school is 56 spaces; however, the school provides only 24 off-street parking spaces with the remainder of the parking provided along George Washington Boulevard and Morris Street. Therefore, a variance is requested to reduce the off-street parking requirement from 56 spaces to 24 spaces.

Since almost one-half of the school property was condemned for the construction of I-135, insufficient property remains to construct the proposed addition within the required setbacks without costly duplication of internal hallways to provide access to rooms within proposed addition. Therefore, the applicant is requesting a variance to reduce the street side setback along I-135 from 15 feet to 5 feet. Additionally, existing non-conforming structures are located within 10 feet of the Morris Street right-of-way, and since a public hearing is already being held to consider variance requests for the property, the applicant is requesting a variance to reduce the street side setback along Morris Street from 15 feet to 10 feet.

**ADJACENT ZONING AND LAND USE:**

NORTH	"TF-3" Single-family residences
SOUTH	"TF-3" Single-family residences
EAST	"TF-3" Single-family residences
WEST	"R.O.W" I-135 right-of-way

*The five conditions necessary for approval apply to all variances requested.*

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the almost one-half of the original school site was condemned by the State for the construction of I-135, and the remaining property is insufficient to allow for the expansion of the school building within the required building setbacks. Additionally, the property fronts George Washington Boulevard, which is a former arterial street that terminates in a cul-de-sac at the north end of the school property and provides sufficient pavement width for two-moving lanes of traffic as well as parking on both sides of the street.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variances requested would not adversely affect the rights of adjacent property owners, inasmuch as the 24 off-street parking spaces in combination with 28 on-street parking spaces along George Washington Boulevard and 10 on-street parking spaces along the north side of Morris Street should provide sufficient parking spaces for the school to prevent on-street parking for the school from congesting surrounding residential streets. Additionally, the reduction of the building setbacks to 5 feet along the west property line and to 10 feet along the south property line will not negatively impact adjacent properties since there are no structures on adjacent properties that abut these setback areas.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the addition to the school could have been developed in full compliance with the zoning regulations were almost one-half of the school property not condemned for the construction of I-135.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the parking requirement could only be met by the demolition of existing housing for the construction of an off-street parking area, which would likely lead detrimental impacts on the single-family residential properties abutting the off-street parking area. Additionally, education is of primary interest to the public, and the increased expenses involved with constructing an addition with more internal hallways in order to conform to the building setbacks would be funded by public tax money.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the intent of setback requirements is to provide sufficient space for light, air, and circulation and for fire protection. With the requested setback reductions, the property still meets the light, air, circulation, and fire protection intents of building setbacks. Additionally, the intent of parking requirements is to ensure that uses provide sufficient off-street parking to prevent street congestion and illegal parking on neighboring properties. With the extra-wide local street for on-street parking, street congestion should not occur and sufficient parking spaces should be provided to discourage illegal parking on neighboring properties.

**RECOMMENDATION:** Should the Board determine that the conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the variances to reduce the parking space requirement from 56 spaces to 24 spaces and to reduce the street side setbacks from 15 feet to 5 feet on the west and from 15 feet to 10 feet on the south be APPROVED, subject to the following conditions:

1. The site shall be constructed in general conformance with the approved site plan.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**FOSTER:** What is the indication for the availability of the parking lot from the City?

**KNEBEL:** The property is a parking lot already there, and the applicant is still trying to determine if there is an agreement already in place for the school district to use the parking lot.

**FOSTER:** Can that be one of the conditions?

**KNEBEL:** It can be, but it is already a part of the Zoning Code.

**FOSTER:** How wide is George Washington Blvd? There is no problem with two-way traffic?

**KNEBEL:** It is wide enough for two-way traffic with parking on both sides.

**USD 259, %Joe Hoover, 3850 N. Hydraulic, Wichita, KS 67219:** There are 24 spaces in the parking lot, and 28 spaces on George Washington Blvd., and 10 more spaces on Morris Street.

**ROGERS:** Is this a multi-purpose room? Will that be rented for groups to use or is that just for school purpose only?

**HOOVER:** The public could use it for meetings rooms. Sometimes churches will rent or lease while their new building is being constructed.

**RUANE:** Does Metro have evening performances, gatherings, etc., where you would have more needs for parking than daytime hours?

**HOOVER:** Not that I am aware, maybe some parent teacher conference nights.

**RUANE:** Is this a high school?

**HOOVER:** Yes.

**FOSTER:** How many students?

**HOOVER:** I think in 100-range.

**FOSTER:** A lot of students don't drive to school? 52 spaces seems low if you have 100 students at the facility.

**HOOVER:** There is a formula. I think the requirement is 62.

**FOSTER:** Did you consider vacating George Washington? They could give it to you?

**HOOVER:** Yes, that would be great, but we do not own property on both sides of the street.

**RUANE:** Is parking a permitted use on City owned parking lot?

**FOSTER:** Is it a right-of-way that the City owns?

**HOOVER:** Typically they will replace the parking when it is removed for a public project. I am trying to research there might be some possibility that we already own the parking lot.

**KNEBEL:** That is unresolved; and we don't know what occurred there. From reading history, our best guess is that the parking lot was constructed for the school.

**HOOVER:** We would of course sign an agreement with the City, so that we would have the right to use that parking.

**KNEBEL:** Page 163 Unified Zoning Code requires such an agreement.

**RUANE:** Should there be a condition to require a formal lease.

**KNEBEL:** We are not certain who owns the property.

**DICKGRAFE:** I would not suggest that we not put that in the condition either, because of the possibility they already own it, then they would have to come back to the Board.

**HOOVER:** Scott did provide me with that possibility so we are aware that we may have to sign the agreement with the City, and we don't have any problem signing it.

**KNEBEL:** Our position is that it is in the Zoning Code, and we don't feel it necessary to put that condition in the resolution for approval.

**HOOVER:** It will be enforced when we pull a building permit.

**KNEBEL:** It is Sec. IV-A.10.d., page 171, of the Zoning Code which has enforcement by the Zoning Administrator at the time the building permit is issued.

**FOSTER:** Ruane, are you satisfied with the conditions of the Secretary's report to approve it if we add a condition regarding the parking agreement.

**RUANE:** Yes.

**DICKGRAFE:** Assuming that another owns that property.

**FOSTER moves SKELTON seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of variances have been found to exist and the variances be granted subject to the conditions set out in the Secretary's Report and amended as follows: Unless the off-street parking area is owned by the applicant, an appropriate agreement as specified in Sec. IV-A.10.d. of the Unified Zoning Code shall be executed to permit the off-street parking area to be located off site.**

**DICKGRAFE:** Is that Motion for all three variances.

**FOSTER:** Correct.

**MOTION carries 4-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2002-00011**

**WHEREAS**, Unified School District 259 c/o Joe Hoover, (applicant); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variances to reduce the parking space requirements from 56 spaces to 24 spaces and to reduce the street side setbacks from 15 feet to 5 feet on the west and from 10 feet on the south for Metro Boulevard School on property zoned "TF-3" Two-Family Residential and legally described as follows:

Lots 10, 11, 12, 13, 14, 15, 16 and 17, Block 4, and Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, except beginning at the Southwest corner of Lot 14; thence North 442.2 feet to George Washington Boulevard; thence Southeasterly 185 feet; thence Southwesterly to a point on the

North line of Morris Street, said point being 75 feet East of the Drainage Canal; thence West to beginning, Block 5, Roosevelt Field 2nd Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located north of Morris and west of Madison

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of April 23, 2002, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the almost one-half of the original school site was condemned by the State for the construction of I-135, and the remaining property is insufficient to allow for the expansion of the school building within the required building setbacks. Additionally, the property fronts George Washington Boulevard, which is a former arterial street that terminates in a cul-de-sac at the north of end of the school property and provides sufficient pavement width for two-moving lanes of traffic as well as parking on both sides of the street.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variances requested would not adversely affect the rights of adjacent property owners, inasmuch as the 24 off-street parking spaces in combination with 28 on-street parking spaces along George Washington Boulevard and 10 on-street parking spaces along the north side of Morris Street should provide sufficient parking spaces for the school to prevent on-street parking for the school from congesting surrounding residential streets. Additionally, the reduction of the building setbacks to 5 feet along the west property line and to 10 feet along the south property line will not negatively impact adjacent properties since there are no structures on adjacent properties that abut these setback areas.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the addition to the school could have been developed in full compliance with the zoning regulations were almost one-half of the school property not condemned for the construction of I-135.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variances would not adversely affect the public interest, inasmuch as the parking requirement could only be met by the demolition of existing housing for the construction of an off-street parking area, which would likely lead detrimental impacts on the single-family residential properties abutting the off-street parking area. Additionally, education is of primary interest to the public, and the increased expenses involved with constructing an addition with more internal hallways in order to conform to the building setbacks would be funded by public tax money.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the intent of setback requirements is to provide sufficient space for light, air,

and circulation and for fire protection. With the requested setback reductions, the property still meets the light, air, circulation, and fire protection intents of building setbacks. Additionally, the intent of parking requirements is to ensure that uses provide sufficient off-street parking to prevent street congestion and illegal parking on neighboring properties. With the extra-wide local street for on-street parking, street congestion should not occur and sufficient parking spaces should be provided to discourage illegal parking on neighboring properties.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 21.12.590.B, Code of the City of Wichita, that: 1) a variance to Sec. IV-A.4 of the Unified Zoning Code to reduce the parking space requirement from 56 spaces to 24 spaces; and 2) a variance to Sec. III-B.6.d.(6) of the Unified Zoning Code to reduce the street side setbacks from 15 feet to 5 feet on the west and from 15 feet to 10 feet on the south are hereby granted on property zoned "TF-3" Two-Family Residential and legally described as follows:

Lots 10, 11, 12, 13, 14, 15, 16 and 17, Block 4, and Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, except beginning at the Southwest corner of Lot 14; thence North 442.2 feet to George Washington Boulevard; thence Southeasterly 185 feet; thence Southwesterly to a point on the North line of Morris Street, said point being 75 feet East of the Drainage Canal; thence West to beginning, Block 5, Roosevelt Field 2nd Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located north of Morris and west of Madison

The variances are hereby subject to the following conditions:

1. The site shall be constructed in general conformance with the approved site plan.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
3. Unless the off-street parking area is owned by the applicant, an appropriate agreement as specified in Sec. IV-A.10.d. of the Unified Zoning Code shall be executed to permit the off-street parking area to be located off site.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 23<sup>rd</sup> DAY of APRIL, 2002.**

### **Item #3**

**Scott Knebel:** presents staff report. Staff recommends approval, subject to conditions in the Secretary's Report.

### **SECRETARY'S REPORT**

**CASE NUMBER:** BZA2002-00014

**APPLICANT/AGENT:** Catholic Diocese of Wichita (Owner/Applicant); Architectural Innovations, LLC c/o Bradley Doeden (Agent)

**REQUEST:** A variance to reduce off-street parking requirements from 92 spaces to 63 spaces

**CURRENT ZONING:** “GC” General Commercial

**SITE SIZE:** 0.85 acres

**LOCATION:** Northeast corner of Central and Broadway (520 N. Broadway)

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The Unified Zoning Code requires one parking space per three occupants for a restaurant. The Lord’s Diner, which was recently constructed on the subject property located at the northeast corner of Central and Broadway, has an occupancy of 276 and requires 92 off-street parking spaces. The current facility provides 63 off-street parking spaces. A variance is required to reduce the off-street parking requirement by more than 25% for redevelopment sites such as The Lord’s Diner. Shared parking agreements with adjacent churches cannot be used because zoning regulations prohibit shared parking spaces from being located across an arterial street such as Broadway or Central.

The applicant has requested a variance to reduce the parking requirement from 92 spaces to 63 spaces because The Lord’s Diner is not a traditional restaurant. Instead, The Lord’s Diner provides free meals to the homeless and others with insufficient economic resources to secure regular, healthy meals. The applicant indicates in the attached justification that many of the people dining at the facility will walk to facility since they do not have vehicles and that most of the parking will be used by volunteers who prepare and serve the meals. The applicant further indicates that on-street parking is available along Topeka and that off-site parking is available about one block to the south across Central.

**ADJACENT ZONING AND LAND USE:**

NORTH	“GC”	Office
SOUTH	“CBD”	Church
EAST	“GC”	Apartments
WEST	“GC”	Church

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the site is located immediately across the street from the Central Business District, which does not have parking requirements, and is in an area where most structures were built prior to the proliferation of motorized vehicles and do not provide parking sufficient to meet the current parking requirements of the zoning regulations.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the use of the property is not for a typical restaurant, and the typical user of the facility will not be parking a vehicle on the property. Therefore, sufficient parking spaces should be provided on the property and illegal parking for the facility on neighboring properties should not occur.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-



required number of parking spaces is cost prohibitive and would limit the operating capacity of a philanthropic use.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in providing meals for the homeless and others with limited economic resources.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for a restaurant because the typical user of the facility will not be parking a vehicle on the property.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce required off-street parking from 92 spaces to 63 spaces be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the site plan submitted with this application.
2. All parking areas shall be paved and marked.
3. The operation of a restaurant on the site shall be limited to a charity-based restaurant that provides free or reduced-rate meals to people with economic hardships.
4. The maximum occupancy of a restaurant permitted the on-site shall be 276.
5. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
6. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**PHILLIPS:** What are the hours of operation?

**KNEBEL:** I don't know the hours. It appears to be evening time meals are the only one's served.

**PHILLIPS:** The facility is done. Why are we hearing this now?

**KNEBEL:** I don't know why it was not done sooner.

**FOSTER:** Is this a new building or renovated building?

**KNEBEL:** It is a new building the other buildings were demolished.

**Bradley Doeden, Architectural Innovations, 7701 E. Kellogg, Suite 850, Wichita, KS 67207:** I am able to address the two questions from Mr. Phillips. The hours of operation are from 5:30 p.m. until 7:30 p.m. and after that there is clean up. The permit delay, we received the permit having shown that we would fall within the 25% administrative adjustment allowed then we lost a couple of parking stalls do to a landscaping issue, so I was asked to proceed three different ways. They started serving meals February 13.

**PHILLIPS:** Have there been any shortage of parking so far?

**DOEDEN:** I live on Emporia and I have stopped and counted stalls. They have had near capacity but not all full yet. I have asked the manager of the facility his regard as whether he thought the parking was adequate, and he said that if it was not enough spaces they would ask the volunteers to double up on rides.

**FOSTER:** I am under the impression that it has not reached the full capacity yet, right?

**DOEDEN:** They have only been serving less than 300 meals a night not up to the 400 meals they are prepared to make. The building can only handle 276 people at one time.

**FOSTER:** I am worried what will happen when the parking does get too full? Could we put something in here, a note to J.R. or something, so that this will be checked every 6 months or so?

**KNEBEL:** The By-Laws do provide for the OCI to conduct inspections.

**FOSTER:** I would think that maybe we can give an indication to staff to have OCI review within 6 months so it doesn't get out of hand.

**RUANE:** Can you pin down a specific time for the inspection to occur?

**FOSTER:** Maybe the architect can.

**DOEDEN:** I haven't checked in the last three weeks but it has stabilized since they opened. Six months seems like a reasonable time to me.

**FOSTER:** I think six months would be good to have OCI check it in September.

**RUANE:** My opinion is that the variance should be allowed. The patrons going in are on foot most of them. Those cars in the parking lot are probably the volunteers. I can go along with Bickley's suggestion to go along with the 6- month check from OCI.

**SKELTON:** What if OCI says that the parking is over capacity two or three times wouldn't it be to late after the variance was passed.

**FOSTER:** It says somewhere in the staff report to modify the parking.

**DICKGRAFE:** I am not sure you can just ask staff to do this. You need to make a conditions. The applicant may be able to submit alternatives for parking as necessary to comply with the BZA resolution.

**FOSTER:** My concern is that this area does not have a lot of parking.

**DOEDEN:** They have 30 volunteers every evening. Some of that parking could be reduced. Yes, I think that we will be all-right with these conditions.

**FOSTER moves PHILLIPS seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of variances have been found to exist and the variances be granted subject to the conditions set out in the Secretary's Report and**

amendment to the conditions as follows: Condition #6 - The site shall be inspected periodically by the Office of Central Inspection with a report to the Board within 6 months of granting the variance. If based on the report the Board finds that the parking lot is consistently over capacity, the applicant shall propose solutions satisfactory to the Board to comply with the variance. Condition #7 - The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**Motion carries 5-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2002-00014**

**WHEREAS**, Catholic Diocese of Wichita, (applicant); and Architectural Innovations, LLC, c/o Bradley Doeden (Agent), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce off-street parking requirements from 92 spaces to 63 spaces on property zoned "GC" General Commercial and legally described as follows:

That Part of J.P. Hilton's Reserve in J.P. Hilton's Addition to Wichita, Kansas, Sedgwick County Kansas described as follows:

Beginning at the Southwest Corner of said Reserve, thence North 100 feet; thence East 140 feet; thence South 100 feet; thence West 140 feet to the place of beginning. AND Beginning 100 feet North of the Southwest Corner of said Reserve, thence North 130 feet; thence East 140 feet; thence South 130 feet; thence West 140 feet to beginning. TOGETHER WITH The North 50 feet of the West 140 feet of Hilton's Reserve, J.P. Hilton's Addition to the City of Wichita, Sedgwick County, Kansas. Generally located on the northeast corner of Central and Broadway.

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of April 23, 2002, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the site is located immediately across the street from the Central Business District, which does not have parking requirements, and is in an area where most structures were built prior to the proliferation of motorized vehicles and do not provide parking sufficient to meet the current parking requirements of the zoning regulations.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the use of the property is not for a typical restaurant, and the typical user of the facility will not be parking a vehicle on the property. Therefore, sufficient parking spaces should be provided on the property and illegal parking for the facility on neighboring properties should not occur.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would limit the operating capacity of a philanthropic use.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in providing meals for the homeless and others with limited economic resources.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for a restaurant because the typical user of the facility will not be parking a vehicle on the property.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Sec. IV-A.4 of the Unified Zoning Code to reduce off-street parking requirements from 92 spaces to 63 spaces is hereby granted on property zoned "GC" General Commercial and legally described as follows:

That Part of J.P. Hilton's Reserve in J.P. Hilton's Addition to Wichita, Kansas, Sedgwick County Kansas described as follows:

Beginning at the Southwest Corner of said Reserve, thence North 100 feet; thence East 140 feet; thence South 100 feet; thence West 140 feet to the place of beginning. AND Beginning 100 feet North of the Southwest Corner of said Reserve, thence North 130 feet; thence East 140 feet; thence South 130 feet; thence West 140 feet to beginning. TOGETHER WITH The North 50 feet of the West 140 feet of Hilton's Reserve, J.P. Hilton's Addition to the City of Wichita, Sedgwick County, Kansas. Generally located on the northeast corner of Central and Broadway.

The variance is hereby subject to the following conditions:

1. The site shall be developed in substantial conformance with the site plan submitted with this application.
2. All parking areas shall be paved and marked.
3. The operation of a restaurant on the site shall be limited to a charity-based restaurant that provides free or reduced-rate meals to people with economic hardships.
4. The maximum occupancy of a restaurant permitted the on-site shall be 276.

5. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
6. The site shall be inspected periodically by the Office of Central Inspection with a report to the Board within 6 months of granting the variance. If based on the report the Board finds that the parking lot is consistently over capacity, the applicant shall propose solutions satisfactory to the Board to comply with the variance.
7. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 23<sup>rd</sup> DAY of APRIL, 2002.**

**Item #4**

**Scott Knebel** presents staff report. Staff recommends approval.

**SECRETARY'S REPORT**

**CASE NUMBER:** BZA2002-00015

**OWNER/APPLICANT:** David and Susan Saidian

**AGENT:** Hutton Construction Corporation c/o Douglas G. Rupe

**REQUEST:** Variance to reduce the front building setback from 20 feet to 10 feet for an expansion of Line Medical, Inc.

**CURRENT ZONING:** "LI" Limited Industrial

**LOCATION:** Generally located north of Murdock and west of Mosley (810 E. Murdock)

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicants are requesting a variance to reduce the front building setback from 20 feet to 10 feet for a proposed expansion of the building housing Line Medical, Inc. located on the subject property. The subject property is generally located north of Murdock and west of Mosley (810 E. Murdock) and is zoned "LI" Limited Industrial. The zoning regulations require a 20-foot front building setback in the "LI" Limited Industrial, and a reduction of the front building setback by greater than 20% requires a variance. The zoning regulations also allow "setback averaging" whereby a building can be setback a distance equal to the average front building setback of the existing structures on the within the block on the same side of the street. In the case of the subject property, the average front building setback of structures on the north side of this block of Murdock is greater than 10 feet.

The existing structure on the subject property currently provides only a 10-foot front building setback. The existing structure was built in 1974. In 1974, the "E" Light Industrial zoning district (equivalent to "LI" Limited Industrial) did not require a front building setback. The applicants request to expand the existing structure to the west and to maintain the existing 10-foot front building setback as shown on the attached site plan. The applicants' justification (see attached) indicates that the business needs to expand at the current location due to a need to be in close proximity to the community's hospitals and

medical clinics and due to the existing investment the applicants' have made in the current property. The subject property is not of sufficient size for the proposed expansion if a 20-foot front building setback is provided. As shown in attached pictures, most of the structures in this area, including the existing structure on the subject property, do not provide a 20-foot front building setback.

**ADJACENT ZONING AND LAND USE:**

NORTH	"LI"	Vacant
SOUTH	"LI"	Warehouse
EAST	"LI"	Warehouse
WEST	"LI"	Hospital parking lot

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the property is located in area where nearly all of the structures were constructed under zoning regulations that did not require a front building setback. Over the years the zoning regulations have changed to require a 20-foot front building setback in the subject property's "LI" Limited Industrial zoning district; however, most of the structures in this area, including the existing structure on the subject property, do not provide a 20-foot front building setback.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. No additional encroachment would occur along the south boundary of the subject property that is in excess of the placement of the existing structure. The addition to the structure would abut Murdock, and sufficient building setback to allow for landscaping, fire protection, separation, light and air circulation, and pedestrian access will remain.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the lot space is limited and any logical addition to the structure would require building into the existing zoning setback. Additionally, the 20-foot front building setback is a change to the zoning regulations since the structure being expanded was constructed.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the front building setback and therefore there will be no effect on the general public.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the changes in the zoning regulations to require a 20-foot front building setback in the "LI" Limited Industrial zoning district are intended to provide a landscaped front yard for industrial parks in suburban locations and are not intended to change the character of inner-city industrial areas where buildings are constructed close to the front property line, which is typically allowed to continue through the setback averaging provisions of the zoning regulations.

**RECOMMENDATION:** Should the Board determine that conditions necessary grant the variance exist, then it is the recommendation of the Secretary that the variance to reduce the front building setback from 20 feet to 10 feet be APPROVED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front building setback shall be reduced from 20 feet to 10 feet. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plan.
2. Existing trees in the landscaped street yard shall be replaced by a like number of trees if they are removed during construction.
3. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**LES MOCK, Wilson, Darnell, Mann, 105 N. Washington, Wichita, KS 67202:** The pharmacy is no longer going to be a part of this project.

**RUANE:** At the back of the proposed addition what is in the portion with diagonal lines?

**MOCK:** Transformers and electrical usage.

**RUANE:** So it is outside?

**MOCK:** Yes.

**FOSTER:** Is there still enough room to meet all the landscaping there?

**MOCK:** We have all the trees there. We just have to maintain them.

**FOSTER:** I am in favor of this.

**ROGERS moves SKELTON seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of variances have been found to exist and the variances be granted subject to the conditions set out in the Secretary's Report.**

**MOTION carries 5-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2002-00015**

**WHEREAS,** David and Susan Saidian, (applicant); and Hutton Construction Corporation c/o Douglas G. Rupe (Agent), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the front building setback from 20 feet to 10 feet for an expansion of Line Medical Inc., on property zoned "LI" Limited Industrial and legally described as follows:

Lots 16, 18, 20, 22, & 24 Jones 1st Addition (Suppl), Wichita, Sedgwick County, Kansas.  
Generally located north of Murdock and west of Mosley (810 E. Murdock).

**WHEREAS,** proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of April 23, 2002, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the property is located in area where nearly all of the structures were constructed under zoning regulations that did not require a front building setback. Over the years the zoning regulations have changed to require a 20-foot front building setback in the subject property's "LI" Limited Industrial zoning district; however, most of the structures in this area, including the existing structure on the subject property, do not provide a 20-foot front building setback.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. No additional encroachment would occur along the south boundary of the subject property that is in excess of the placement of the existing structure. The addition to the structure would abut Murdock, and sufficient building setback to allow for landscaping, fire protection, separation, light and air circulation, and pedestrian access will remain.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the lot space is limited and any logical addition to the structure would require building into the existing zoning setback. Additionally, the 20-foot front building setback is a change to the zoning regulations since the structure being expanded was constructed.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the front building setback and therefore there will be no effect on the general public.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the changes in the zoning regulations to require a 20-foot front building setback in the "LI" Limited Industrial zoning district are intended to provide a landscaped front yard for industrial parks in suburban locations and are not intended to change the character of inner-city industrial areas where buildings are constructed close to the front property line, which is typically allowed to continue through the setback averaging provisions of the zoning regulations.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.



**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Sec. III-B.19.d.(3) of the Unified Zoning Code to reduce the front building setback from 20 feet to 10 feet is hereby granted on property zoned "LI" Limited Industrial and legally described as follows:

Lots 16, 18, 20, 22, & 24 Jones 1st Addition (Suppl), Wichita, Sedgwick County, Kansas.  
Generally located north of Murdock and west of Mosley (810 E. Murdock).

The variance is hereby subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front building setback shall be reduced from 20 feet to 10 feet. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plan.
2. Existing trees in the landscaped street yard shall be replaced by a like number of trees if they are removed during construction.
3. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 23<sup>rd</sup> DAY of APRIL, 2002.**

**RUANE:** An off-agenda item, in the future the minutes will not be verbatim.

**DICKGRAFE:** I'm not sure if this can be done since the BZA is a quasi-judicial Board. A record must be kept.

**KNEBEL:** The tape will still be recording the discussion and will be used as the record.

**FOSTER:** I think the appeal cases will need little more interest than the other ones.

**PHILLIPS:** Some of the appeals need attention. The others don't need that.

**Meeting adjourned at 2:50 p.m.**